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CJ POLYMERS SDN BHD v. KERK HAN MENG & ANOR

COURT OF APPEAL, PUTRAJAYA
HASHIM HAMZAH JCA
AZIZUL AZMI ADNAN JCA
AHMAD FAIRUZ ZAINOL ABIDIN JCA
B [CIVIL APPEAL NO: W-02(IM)(NCC)-1147-07-2024]
14 OCTOBER 2025

Abstract – *One of the reasons to justify consolidation would be to prevent inconsistent findings of fact being arrived at by courts hearing cases premised upon the same transaction. However, if the application for consolidation is a mere tactical manoeuvre and results in an abuse of the process of the court, the court would not allow such an application for consolidation.*

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CIVIL PROCEDURE: *Action – Consolidation of actions – Application for – Whether issues related to one another – Whether merits of cases sought to be consolidated depend on same transaction – Whether absence of order for consolidation would render contentions of fraud in one case having to be proved in another case – Whether possibility of inconsistent finding of fact primary consideration in application for consolidation – Whether application ought to be allowed – Rules of Court 2012, O. 4 r. 1 & O. 57 r. 1(1)*

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The appellant company ('CJ Polymers'), applied for its writ action to be transferred to another court, which was hearing another suit in which the appellant was a defendant and for the two proceedings to be consolidated. The appellant commenced a writ action ('Suit 786') against Kerk Han Meng ('Kerk') and Sim Chin Hu ('Sim'), its former directors, alleging, among others, that they had undertaken certain transactions which it considered dubious and/or tainted with fraud and dishonesty. As a result of these transactions, more than RM9 million had been misappropriated from the company. It was also alleged that some of the sums misappropriated were subsequently used by Kerk and Sim to subscribe for shares in the company pursuant to a rights issue. The company claimed, among others, for the return of the sums misappropriated, as well as interests representing the opportunity costs arising from the loss of use of such funds. The specifically pleaded causes of action against Kerk and Sim encompassed fraud, breach of fiduciary duties and conspiracy to injure. Kerk commenced an oppression action pursuant to s. 346 of the Companies Act 2016 ('CA') ('OS 547'). The defendants in the action were the other shareholders in the company as well as the company itself. Kerk alleged that Lee Yu Meng ('Ms Lee'), another director and shareholder in the company, had unilaterally removed him as a director, and that this constituted an act of oppression, as it breached his legitimate expectation to participate in the management of the company. Kerk averred that Ms Lee held her shares in the company as nominee for the

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second defendant, Kua Chin Wee. One of the defendants in OS 547 successfully applied for the cross-examination of the deponents of affidavits in that case. The appellant's application was dismissed. The High Court Judge, while accepting that he was seized with the jurisdiction to order consolidation under O. 4 r. 1 of the Rules of Court 2012 ('ROC'), found that, on the merits of the application, there was no common issue arising in both suits that warranted an order for consolidation.

Held (allowing appeal in part)
Per Azizul Azmi Adnan JCA delivering the judgment of the court:

(1) The Court of Appeal's decision in *Kerajaan Negeri Kelantan v. Petroliam Nasional Bhd & Anor* does not stand for the proposition that an application for transfer could not be made within the same branch of the High Court, whether between divisions of the same station or between stations. The court in that case, which was distinguished on its peculiar facts, would have been entirely correct to have ruled that, on the basis of the definition of 'court' in s. 3 of the Courts of Judicature Act 1964 ('CJA'), item 12 of the Schedule to the CJA refers only to transfers between the two branches of the High Court, *ie*, the High Court of Malaya and the High Court of Sabah and Sarawak. Section 25(2) of the CJA only provides for the additional powers of the High Court and does not seek to limit either its powers arising from its inherent jurisdiction, nor powers that have been vested in the courts prior to 16 September 1963. The power to transfer cases – whether with or without an application for consolidation – would have existed before Merdeka Day and hence would not have been ousted by item 12 of the Schedule to the CJA. (para 27)

(2) It would not be open to a shareholder in an *Ebrahimi*-type company – a company established on a relationship of probity, mutual trust, good faith and confidence – to act in breach of that duty of good faith and confidence, and then to seek the assistance of the court to impose restrictions on the other shareholders when they purport to act in exercise of their legal rights as a response to that breach. The issues in dispute in Suit 786 would include the allegation of fraud and misappropriation, and this would be the primary driver for the question of whether the removal of Kerk as a director was justified in the circumstances of the case. Thus, the merits of at least part of the two cases would depend on the same transactions. In the absence of an order for consolidation (or a direction of court for the cases to be heard together), all the contentions of fraud would have to be proven afresh in the subsequent case, because of the proper operation of s. 43 of the Evidence Act 1950. (paras 30-32)

(3) The possibility of inconsistent findings of fact would not be the only consideration in an application for consolidation. The delay on the part of the company to make the application for consolidation had been overtaken by events. There subsequently had been an application by the defendant in OS 547 to cross-examine the deponents of affidavits filed in that case, which application has been allowed by the High Court. Hence, the issue of delay in case disposal would not be as acute as it had been when the application for consolidation was heard before the High Court. (paras 35 & 36)

(4) In the circumstances, the court directed Suit 786 to be transferred to the High Court hearing OS 547, and for both cases to be heard in a manner to be determined by the judge of the transferee High Court. The appeal was allowed only in respect of the prayer for the transfer of proceedings in encl. 33 of the court below, pursuant to O. 57 r. 1(1) of the ROC. (para 37)

Case(s) referred to:

Central Securities (Holdings) Bhd v. Haron Mohamed Zaid [1978] CLJU 20; [1978] 1 LNS 20 FC ***(refd)***

Datuk S Nallakaruppan & Ors v. Datuk Seri Anwar Ibrahim & Other Appeals [2015] 6 CLJ 425 CA ***(refd)***

Jaya Sudhir Jayaram v. Nautical Supreme Sdn Bhd [2019] 6 CLJ 292 CA ***(refd)***

Kerajaan Negeri Kelantan v. Petroliam Nasional Bhd & Anor [2011] 6 CLJ 649 CA ***(dist)***

Koh Heng Jin Holdings Sdn Bhd & Anor v. Lee Quan Yoong & Anor [2022] CLJU 504; [2022] 1 LNS 504 HC ***(refd)***

Kumagai Gumi Co Ltd v. Zenecon-Kumagai Sdn Bhd & Ors And Another Application [1994] CLJU 279; [1994] 1 LNS 279 HC ***(refd)***

Legislation referred to:

Companies Act 2016, s. 346

Courts of Judicature Act 1964, s. 25(1), (2), (3), Schedule item 12

Evidence Act 1950, s. 43

Rules of Court 2012, O. 4 r. 1, O. 57 r. 1(1)

For the appellant - AG Kalidas, Parimalar Ilamaran & Wesley Wong Ray Fung; M/s K Nadarajah & Partners

For the 1st respondent - Raymond Tan; M/s Jeeva Partnership

For the 2nd respondent - Brendan Navin Siva & Aida Haryani Salamon; M/s Brendan Siva

[Editor's note: For the High Court judgment, please see CJ Polymers Sdn Bhd v. Kerk Han Meng & Anor [2024] CLJU 1553 (overruled in part).]

Reported by S Barathi

JUDGMENT

Azizul Azmi Adnan JCA:

Introduction

[1] The appellant, which was the plaintiff in the court below, made an application for its writ action to be transferred to another court, which was hearing another suit in which the appellant was a defendant, and for the two proceedings to be consolidated. This application was refused by the High Court, against which decision the appellant now appeals.

[2] The High Court was of the view that the application was a mere tactical manoeuvre, and therefore an abuse of the process of court. Furthermore, the court found that the transfer would not result in any savings of time or costs, due to the differing nature of the two suits.

Material Facts

[3] The material facts are not in dispute.

Suit 786

[4] The appellant-plaintiff, CJ Polymers Sdn Bhd (referred to in this judgment variously as "CJ Polymers" or the "company"), commenced a writ action (Suit 786) against Kerk Han Meng and Sim Chin Hu, who are its former directors. The plaintiff alleged, among others, that Mr Kerk and Mr Sim had undertaken certain transactions which it considered dubious and/or tainted with fraud and dishonesty. It was alleged that, as a result of these transactions, more than RM9 million had been misappropriated from the company. It was also alleged that some of the sums misappropriated were subsequently used by Mr Kerk and Mr Sim to subscribe for shares in the company pursuant to a rights issue. The company claimed, among others, for the return of the sums misappropriated, as well as interest representing the opportunity costs arising from the loss of use of such funds.

[5] The specifically pleaded causes of action against Mr Kerk and Mr Sim encompassed fraud, breach of fiduciary duties and conspiracy to injure.

OS 547

[6] Mr Kerk commenced an oppression action pursuant to s. 346 of the Companies Act 2016 through an originating summons filed at NCC2 of the High Court at Kuala Lumpur (OS 547). The defendants in the action were the other shareholders in the company as well as the company itself. Mr Kerk alleged (among others) that Ms Lee Yu Meng, another director and shareholder in the company (who is the first defendant in OS 547), had

unilaterally removed him as a director, and that this constituted an act of oppression, as it breached his legitimate expectation to participate in the management of the company. Mr Kerk averred that Ms Lee held her shares in the company as nominee for the second defendant, Mr Kua Chin Wee.

[7] One of the defendants in OS 547 successfully applied for the cross-examination of the deponents of affidavits in that case. Trial for this purpose has been fixed for 10 to 13 November 2025.

The Jurisdiction Point

[8] In the present case, the learned High Court Judge appeared to accept that he was seized with the jurisdiction to order consolidation under O. 4 r. 1 of the Rules of Court 2012, but he found that, on the merits of the application, there was no common issue arising in both suits that warranted an order for consolidation. Although there was no appeal by the respondents on the finding of jurisdiction, we consider it appropriate that we address this point here, as it is an issue of adjectival law of some importance.

[9] In *Kerajaan Negeri Kelantan v. Petroliam Nasional Bhd & Anor* [2011] 6 CLJ 649, the plaintiff made an application to re-transfer the action from the civil division of the High Court at Kuala Lumpur to the commercial division of the same court. The suit had initially been commenced in the commercial division but had been transferred administratively by the managing judge of the commercial division to the civil division pursuant to Practice Direction No 1 of 2008. The plaintiff then applied for the case to be re-transferred to the civil division.

[10] The decision in that case centred around the proper construction of item 12 of the Schedule to the Courts of Judicature Act 1964, read together with s. 25(2) of the same Act.

[11] Section 25 of the Courts of Judicature Act 1964 reads as follows:

> 25 Powers of the High Court
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> (1) Without prejudice to the generality of Article 121 of the Constitution the High Court shall in the exercise of its jurisdiction have all the powers which were vested in it immediately prior to Malaysia Day and such other powers as may be vested in it by any written law in force within its local jurisdiction.
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> (2) Without prejudice to the generality of subsection (1) the High Court shall have the additional powers set out in the Schedule:
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> Provided that all such powers shall be exercised in accordance with any written law or rules of court relating to the same.

[12] Item 12 of the Schedule to the Courts of Judicature Act 1964 reads as follows: A

12. Transfer of proceedings

Power to transfer any proceedings to any other Court or to or from any subordinate court, and in the case of transfer to or from a subordinate court to give any directions as to the further conduct thereof: B

Provided that this power shall be exercised in such manner as may be prescribed by any rules of court.

[13] The Court of Appeal held that item 12 was inapplicable in that case, because the expression "court" as used in the provision referred to the Federal Court, the Court of Appeal and the two High Courts in Malaysia. Hence, item 12 was only engaged in respect of an application to transfer a case from the High Court of Malaya to the High Court of Sabah and Sarawak or *vice versa*, but not to transfers within the same High Court. Low Hop Bing JCA, delivering the judgment of the court, stated as follows: C D

[13] We are of the view that item 12 is clear and unambiguous. The power conferred thereunder concerns the transfer of any proceedings to any other "court". The meaning of the word "court" in the context of the first limb in item 12 is of immense importance. It is contained in the definition section *ie*, s. 3 of the Courts of Judicature Act 1964. Under s. 3, "court" means the Federal Court, the Court of Appeal and "the High Court" as the case may require. "High Court" is defined, in s. 3 also, to mean the High Court in Malaya, and the High Court in Sabah and Sarawak or either of them, as the case may require. With specific reference to the facts prevailing in the instant appeal, the power under item 12 is intended to be exercised for the transfer of proceedings, *inter alia*: E F

(1) from the High Court in Malaya or in Sabah and Sarawak or either of them, to the Court of Appeal and the Federal Court; and

(2) from one High Court to another High Court, as defined in s. 3.

[14] It is abundantly clear to us that item 12 is inapplicable where, *eg*, as in the instant appeal, there was no transfer of proceedings from one High Court to another High Court as defined in s. 3 above. If at all there was any "transfer" of proceedings, at most, it was a transfer of the plaintiff's action from one division, *ie*, the commercial division to another division, the civil division. As a matter of fact, the movement of the plaintiff's action was effected by the managing judge pursuant to the PD, merely from the commercial division to the civil division, while the court remained unchanged, *ie*, the High Court in Malaya at Kuala Lumpur. That being the case, the plaintiff's contention based on item 12 cannot be sustained. G H I

[14] Crucially, the Court of Appeal also found that the Practice Direction issued by a Chief Judge to be binding on litigants. Under the relevant practice direction, a party seeking specific performance of a contract came within the purview of the civil division:

> [17] The plaintiff's action in the High Court seeks, *inter alia*, the remedy of specific performance of the contract executed between the plaintiff and Petronas, and clearly comes within the purview of a civil action, under para. 3.1 of the PD which covers contracts which are further categorised in para. 3.1.3 thereof. The plaintiff's action should have been properly filed in the civil division.
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> [18] In addition, the PD provides particularly that any matter not listed under the commercial division ought to be filed in the civil division. In the PD, only the contract of agency was listed in para 3.2.6 under the commercial division. After para 3.2.12, there was a specific note prescribing that any dispute arising from the registration and distribution of any case must be referred to and resolved by the managing judge of the specific division. The plaintiff's action has been referred to and resolved by the managing judge, and that was completely consistent with the PD. The whole picture has been crystallized in the letter dated 19 January 2011 from the deputy registrar of the commercial division to the deputy registrar of the civil division. It states that the plaintiff's action has been referred to the managing judge of the commercial division for instruction, and the managing judge has duly directed it to be transferred to the civil division. We are of the view that it was effected exclusively to ensure that the matter be heard before the appropriate division of the same High Court. The plaintiff's affidavit in support of the re-transfer application did not aver anything which could be construed as being prejudicial to the plaintiff in the movement of the plaintiff's action to the civil division which, after all, is another division of the same High Court exercising co-ordinate jurisdiction in the same building in Kuala Lumpur.

[15] Order 57 r. 1(1) of the Rules of Court 2012 specifically contemplates the ability of the High Court to order proceedings to be transferred to another High Court of coordinate jurisdiction. It provides as follows:

> Transfer of proceedings to another Court (O. 57 r. 1)
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> 1. (1) Where the Judge of the High Court or a Judge of the Sessions Court or a Magistrate is satisfied that any proceedings in that Court can be more conveniently or fairly tried in some other Court of co-ordinate jurisdiction, he may on application by any party, order the proceedings to be transferred to the other Court.

[16] If the case of *Kerajaan Negeri Kelantan v. Petroliam Nasional* is read in the manner suggested by counsel for the respondents, it would follow that O. 57 r. 1(1) is only engaged when an application is made for the transfer of proceedings from the High Court of Malaya to the High Court of Sabah and Sarawak.

[17] However, the Federal Court case of *Central Securities (Holdings) Bhd v. Haron Mohamed Zaid* [1978] CLJU 20; [1978] 1 LNS 20; [1979] 2 MLJ 244 does appear to contemplate that transfers may be made between two courts within the High Court of Malaya. A

[18] The defendant in that case had agreed to sell shares to the plaintiff. There was only effective delivery for some of the shares. The plaintiff sued for the refund of the purchase price in respect of the undelivered shares. B

[19] The defendant commenced a third-party action against Central Securities (Holdings) Sdn Bhd (the appellant before the Federal Court), from whom the defendant had purchased the shares. The reason that only some of the shares could be delivered to the plaintiff was that the relevant instrument of transfer for the other shares had been executed in favour of a company known as International Holdings (Pte) Ltd, and hence those shares could not be registered in favour of the plaintiff. C

[20] Judgment was entered between the plaintiff and the defendant. D

[21] The appellant had made an application for the third-party action to be consolidated with another writ action. In this other writ action, the appellant sought rescission of its sale of shares to the defendant, on an allegation of fraud. Like the plaintiff's action, this other suit was also filed at the High Court at Kuala Lumpur. E

[22] The High Court summarily entered judgment in favour of the defendant against the appellant and dismissed the application for consolidation, on the basis that the causes of action pursued in the two actions were different and that the evidence required to prove the allegations in the two causes of action were not the same. F

[23] The Federal Court found that the summary judgment ought not have been entered against the appellant. It also allowed the appellant's appeal against the refusal of its application for consolidation, holding as follows:

> The main purpose of consolidation is to save costs and time, and therefore it will not usually be ordered unless there is "some common question of law or fact bearing sufficient importance in proportion to the rest" of the subject-matter of the actions "to render it desirable that the whole should be disposed of at the same time" (*Payne v. British Time Recorder Co* [1921] 2 KB 16, *Horwood v. British Statesman Publishing Co, Ltd* [1929] WN 38, *Daws v. Daily Sketch* [1960] 1 WLR 126; [1960] 1 All ER 397). Where this is the case, actions may be consolidated where the plaintiffs are the same and the defendants are the same. G H
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> Now, the causes of action in this third party proceeding and Civil Suit No 2323 of 1976, where the plaintiffs and the defendants are the same, arise out of the same series of transactions, *ie*, purchase of United Holdings shares and short delivery of such shares, and in our view there are I

A questions of fact or law common to them, *eg*, where rescission is a common element of relief, it is only necessary to prove that there is misrepresentation, innocent or fraudulent.

We may add that in such circumstances, one of the tests in deciding whether consolidation should be ordered is to determine whether two
B inconsistent judgments will come into existence if it is not ordered.

[24] The case of *Jaya Sudhir Jayaram v. Nautical Supreme Sdn Bhd* [2019] 6 CLJ 292 concerned an application to consolidate two suits filed at the High Court at Kuala Lumpur, one in the civil division and the other in the commercial division. The Court of Appeal did not find favour with the
C argument of counsel that O. 4 r. 1 of the Rules of Court 2012 only permitted consolidation where there were two suits pending before the same High Court, holding as follows:

[11] As for the argument that only cases before the same High Court can be transferred, with respect we were unable to accede to the same.
D Order 57 of the Rules of Court 2012 on transfer of proceedings does not come into play in the factual matrix of this case although it cannot be denied that the natural consequence of the consolidation order when allowed would result in one case being transferred to the other court and heard by the same judge. Order 57 r. 1(1) caters specifically for cases where, for instance, a case in the Kuala Lumpur High Court would be
E more expediently heard in the High Court in Shah Alam. In this appeal, both cases were filed in the High Court of Kuala Lumpur but in different divisions, cannot stand in the way of the all-important consideration as stated in *Central Securities* for these different divisions were created to streamline the courts for a more expeditious and efficient disposal of cases but not to create an obstacle or a hindrance against genuinely deserving
F cases filed in different divisions.

[25] It may thus be seen that in *Central Securities v. Haron Mohamed Zaid*, the Federal Court permitted an application for consolidation of two cases within the same division of the High Court at Kuala Lumpur, whereas the Court of Appeal in *Kerajaan Negeri Kelantan v. Petroliam Nasional* refused the
G appellant's appeal for a case to be transferred from the civil division to the commercial division of the High Court at Kuala Lumpur, on the basis that item 12 of the Schedule to the Courts of Judicature Act 1964 did not permit an intra-transfer between two courts within the High Court of Malaya. However, the Court of Appeal in *Jaya Sudhir Jayaram v. Nautical Supreme*
H permitted the transfer and consolidation of cases between two divisions of the same High Court, apparently in direct contradiction to *Kerajaan Negeri Kelantan v. Petroliam Nasional*.

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[26] The High Court in *Koh Heng Jin Holdings Sdn Bhd & Anor v. Lee Quan Yoong & Anor* [2022] CLJU 504; [2022] 1 LNS 504; [2022] MLJU 450 sought to reconcile the authorities, suggesting that an intra High Court transfer is permissible if accompanied by an application for consolidation under O. 4 r. 1. Ong Chee Kwan JC (as His Lordship then was) held:

> [29] One way to harmonise the above seemingly inconsistent decisions is that a transfer of proceedings from one division to another division within the same branch of a High Court is permissible if the transfer is ancillary to an order for the consolidation of the two or more proceedings under O. 4 of the Rules. In the case where no consolidation is sought, an application to transfer under O. 57 r. 1 of the Rules which is based on court's power under item 12 of the Schedule to the CJA can only be permitted if the transfer is to another branch of the High Court. Order 57 r. 1 is not applicable to a transfer of proceedings between two courts located within the same branch of the High Court.

Our Decision

[27] In our respectful view, the decision of the Court of Appeal in *Kerajaan Negeri Kelantan v. Petroliam Nasional* does not stand for the proposition that an application for transfer cannot be made within the same branch of the High Court, whether between divisions in the same station (for example, between the commercial and civil divisions of the High Court at Kuala Lumpur), or between stations (for example, between the High Court at Kuala Lumpur and the High Court at Shah Alam). The reasons are as follows:

(i) first, the application for transfer in *Kerajaan Negeri Kelantan v. Petroliam Nasional* appeared to have been premised entirely on item 12 of the Schedule, and not O. 4 r. 1 nor O. 57 r. 1(1) of the Rules of Court 2012. Such being the case, the Court of Appeal in that case would have been entirely correct to have rule that, on the basis of the definition of "court" in s. 3 of the Courts of Judicature Act 1964, item 12 refers only to transfers between the two branches of the High Court (*ie*, the High Court of Malaya and the High Court of Sabah and Sarawak);

(ii) second, s. 25(2) of the Courts of Judicature Act 1964 only provides for the additional powers of the High Court, and does not seek to limit neither its powers arising from its inherent jurisdiction, nor powers that have been vested in the courts prior to 16 September 1963: see the express words of s. 25(1) of the Courts of Judicature Act 1964, reproduced at para. [11] *ante*. The power to transfer cases – whether with or without an application for consolidation – would have existed before Merdeka Day and hence would not have been ousted by item 12 of the Schedule to the Courts of Judicature Act 1964; and

(iii) third, the case of *Kerajaan Negeri Kelantan v. Petroliam Nasional* can be distinguished on its peculiar facts. That case involves an application for re-transfer that had been preceded by an administrative transfer of the proceedings by the managing judge of the commercial division in Kuala Lumpur pursuant to the applicable practice direction that categorised the case as one coming within the civil division. In our view, the usual considerations relating to a transfer of a proceeding ought not apply in such circumstances.

[28] In summary, we are inclined to agree with the conclusion of the High Court on the point of jurisdiction, but not the reasons expressed by the court below.

The Merits Of The Application

[29] In our considered judgment, it is patent that the allegations of fraud and misappropriation are relevant considerations in the oppression action. The reason is that, if the allegations of fraud and misappropriation are proven, it would follow that Mr Kerk cannot then complain that he had been unjustly excluded from management in the company. (See, for example, the case of *Kumagai Gumi Co Ltd v. Zenecon-Kumagai Sdn Bhd & Ors And Another Application* [1994] CLJU 279; [1994] 1 LNS 279; [1994] 2 MLJ 789). In an *Ebrahimi*-type company – that is to say, a company established on a relationship of probity, mutual trust, good faith and confidence – the exercise of a legal right by a shareholder which amounts to a breach of the duties that underpin that relationship of trust, good faith and confidence may entitle the courts to rule that there has been oppression of the rights of the other shareholders.

[30] The mutuality of the duty of good faith and confidence cannot be overstated. It would not be open to a shareholder in an *Ebrahimi*-type company to act in breach of that duty of good faith and confidence, and then to seek the assistance of the court to impose restrictions on the other shareholders when they purport to act in exercise of their legal rights as a response to that breach.

[31] It is well-established that one of the reasons justifying consolidation would be to prevent inconsistent findings of facts being arrived at by courts hearing cases premised upon the same transactions. The issues in dispute in Suit 786 would include the allegation of fraud and misappropriation, and this would be the primary driver for the question of whether the removal of Mr Kerk as director was justified in the circumstances of the case. Thus, the merits of at least part of the two cases will depend on the same transactions.

[32] In the absence of an order for consolidation (or a direction of court for the cases to be heard together), all the contentions of fraud would have to be proven afresh in the subsequent case, because of the proper operation of s. 43 of the Evidence Act 1950.

[33] Section 43 of the Evidence Act 1950 would operate to prevent a court from taking into account findings contained in the judgment of another court, subject to certain limited exceptions. It provides as follows:

> Section 43. Judgments, *etc*, other than those mentioned in sections 40 to 42 when relevant.
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> Judgments, orders or decrees other than those mentioned in sections 40, 41 and 42 are irrelevant unless the existence of such judgment, order or decree is a fact in issue or is relevant under some other provision of this Act.

[34] The scope of operation of s. 43 has been explained in detail by the Court of Appeal in *Datuk S Nallakaruppan & Ors v. Datuk Seri Anwar Ibrahim & Other Appeals* [2015] 6 CLJ 425; [2015] 4 MLJ 34, [2015] 5 MLRA 471.

[35] Of course, the possibility of inconsistent findings of facts would not be the only consideration in an application for consolidation. In this case, the learned High Court Judge did not appear impressed by the delay on the part of the company to make the application for consolidation. The application had been made some seven months after the institution of the suit, when the interdependency of the facts in both cases would have been readily apparent almost immediately upon the filing of the suits.

[36] The issue of delay in the disposal of cases has however been overtaken by events, because there has subsequently been an application by a defendant in OS 547 (Mr Wong Kok Kheong) to cross-examine the deponents of affidavits filed in that case, which application has been allowed by the High Court. Trial is now fixed for three days in November this year. Furthermore, the decision of the High Court to allow the cross-examination of deponents has been made the subject of appeal. Hence the issue of delay in case disposal would not be as acute as it had been when the application for consolidation was heard before the High Court.

[37] For these reasons we direct that Suit 786 be transferred to the High Court hearing OS 547, and for both cases to be heard in a manner to be determined by the judge of the transferee High Court. The appeal is thus allowed in part only, and only in respect of the prayer for the transfer of proceedings in encl. 33 of the court below, pursuant to O. 57 r. 1(1) of the Rules of Court 2012. We direct that costs be paid by the respondents in the amount of RM10,000 for each respondent, such costs to be subject to an allocator.